

Dukes, Jerisha**RECEIVED**
3-17-2020

From: John Hoefer <JHoefer@Willoughbyhoefer.com>
Sent: Friday, March 13, 2020 2:16 PM
To: Dukes, Jerisha
Cc: Hall, Roger; Grube-Lybarker, Carri; Dover, Becky; Nelson, Jeff; Huber, Christopher; lev99webb@icloud.com; Dong, Randall; Boyd, Jocelyn; Pittman, Jenny
Subject: RE: [External] RE: DN2019-281-S - Initial Draft of Revised Notice of Virtual Public Night Hearing

290953

SA
part 1 sv

Ms. Dukes:

The Company has conducted very brief and limited research on this issue and finds it cannot be of assistance without exposing itself to potential liability under the Federal Telephone Consumer Protection Act (TCPA). *See, e.g.*, 47 USCA §227(b)(1)(A)(iii) and B.

Exemptions from the application of the TCPA appear to include only emergency situations and circumstances in which a call recipient has consented in advance to receiving a robocall. *See generally Williams v. Bank of Am., Nat. Ass'n*, No. 4:14-CV-04809-RBH, 2015 WL 3843251, at *2 (D.S.C. June 19, 2015) (citing *Gager v. Dell Fin.Servs., LLC*, 727 F.3d 265, 271 (3d Cir. 2013)) ("The TCPA is a remedial statute that was passed to protect consumers from unwanted automated telephone calls."). The Company also notes that the FCC has rejected efforts by utilities to obtain a blanket exemption to allow them to communicate with their customers through prerecorded message calls and automatic telephone dialing systems to notify customers of service outages, to warn customers of discontinuance of service, and to read meters for billing purposes." *In the Matter of Rules & Regs. Implementing the Tel. Consumer Prot. Act of 1991*, 7 F.C.C. Rcd. 8752, 8777 (1992). There, the FCC found a blanket exemption unwarranted because the statutory emergency exemption was sufficient. *Id.* at 8778. In so doing, it characterized emergency conditions to include "service outages and interruptions in the supply of water, gas or electricity [that] could in many instances pose significant risks to public health and safety. *Id.*

The Company does not have the prior written consent and the circumstances do not appear to the Company to involve an emergency within the ambit of the TCPA. Accordingly, it does not appear that the Company can be protected from exposure under the TCPA and must regretfully and respectfully decline to utilize a robocall system. Of course, if ORS or the Department of Consumer Affairs has information to the contrary, the Company would reconsider its position as it truly wants to be of any assistance it can.

Please let me know if any further information is required or if the Company can be of assistance in some other manner.

John Hoefer

From: John Hoefer
Sent: Friday, March 13, 2020 1:43 PM
To: Dukes, Jerisha <Jerisha.Dukes@psc.sc.gov>
Cc: Hall, Roger <RHall@scconsumer.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Dover, Becky <BDover@scconsumer.gov>; Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>; lev99webb@icloud.com; Dong, Randall <Randall.Dong@psc.sc.gov>; Boyd, Jocelyn <Jocelyn.Boyd@psc.sc.gov>; Pittman, Jenny <jpittman@ors.sc.gov>
Subject: RE: [External] RE: DN2019-281-S - Initial Draft of Revised Notice of Virtual Public Night Hearing

Ms. Dukes:

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MAR 17 2020

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Palmetto Utilities, Inc. is willing to assist in the utilization of a robocall system to notify customers about the March 19 virtual hearing **if it can**.

As an initial matter, the Company does not have that capability in-house and will need to make inquiries to determine the availability of that service from third party contractors, the costs, and the timing (i.e., how soon could a robocall effort be put into action). Assuming that there are no proscriptions against the Company providing customer telephone numbers for this purpose, I will be reporting to you any findings that may result from these inquiries.

Regarding the potential proscriptions, Palmetto Utilities, Inc. is looking into the question of whether there are any legal impediments, limitations, or similar concerns regarding providing customer telephone numbers to third party contractors and/or making robocalls (e.g., the Telephone Consumer Protection Act (TCPA)). My sense is that the TCPA is targeted at telemarketing calls, but I have performed no legal research in this regard. If ORS or the Department of Consumer Affairs have any insight in this regard, the Company would welcome it.

As soon as I have more information, I will let you know.

John Hoefer

From: Dukes, Jerisha <Jerisha.Dukes@psc.sc.gov>
Sent: Friday, March 13, 2020 12:40 PM
To: John Hoefer <JHoefer@Willoughbyhoefer.com>
Cc: Hall, Roger <RHall@scconsumer.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Dover, Becky <BDover@scconsumer.gov>; Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>; lev99webb@icloud.com; Dong, Randall <Randall.Dong@psc.sc.gov>; Boyd, Jocelyn <Jocelyn.Boyd@psc.sc.gov>; Pittman, Jenny <jpittman@ors.sc.gov>
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Mr. Hoefer,

The Commission would like to know if your client would be willing to utilize a robocall system to notify Palmetto Utilities customers of the virtual public night hearing on March 19, 2020?

From: Dukes, Jerisha
Sent: Friday, March 13, 2020 12:33 PM
To: Pittman, Jenny <jpittman@ors.sc.gov>
Cc: Hall, Roger <RHall@scconsumer.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Dover, Becky <BDover@scconsumer.gov>; Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>; lev99webb@icloud.com; John Hoefer <jhoefer@willoughbyhoefer.com>; Alvarez, Colanthia <Colanthia.Alvarez@psc.sc.gov>; Dong, Randall <Randall.Dong@psc.sc.gov>; Boyd, Jocelyn <Jocelyn.Boyd@psc.sc.gov>
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Good Afternoon,

Yes, please post the Revised Notice of Virtual Public Night Hearing to your websites. For your convenience, you may access the most recent version of the notice [here](#).

Thank you for your patience and cooperation as the Commission prepares for next week's hearing.

With warm regards,

Jerisha Dukes, Esq.
Public Service Commission

State of South Carolina
 101 Executive Center Drive, Suite 100
 Columbia, SC 29210
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803-896-5100 (ph) | 803-896-5231 (f) | Jerisha.Dukes@psc.sc.gov

From: Pittman, Jenny <jpittman@ors.sc.gov>

Sent: Friday, March 13, 2020 8:47 AM

To: Alvarez, Colanthia <Colanthia.Alvarez@psc.sc.gov>; Dukes, Jerisha <Jerisha.Dukes@psc.sc.gov>

Cc: Hall, Roger <RHall@scconsumer.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Dover, Becky <BDover@scconsumer.gov>; Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>; lev99webb@icloud.com; John Hoefer <jhoefer@willoughbyhoefer.com>

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ORS would also like to post this revised notice to its website.

Thank you!

Jenny R. Pittman, Esq.
 S.C. Office of Regulatory Staff
 1401 Main Street, Suite 900
 Columbia, SC 29201
 (803)737-0794

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From: John Hoefer <JHoefer@Willoughbyhoefer.com>

Sent: Thursday, March 12, 2020 4:54 PM

To: Alvarez, Colanthia <Colanthia.Alvarez@psc.sc.gov>; lev99webb@icloud.com; Hall, Roger <RHall@scconsumer.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Dover, Becky <BDover@scconsumer.gov>; Pittman, Jenny <jpittman@ors.sc.gov>; Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>

Cc: Dukes, Jerisha <Jerisha.Dukes@psc.sc.gov>

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Ms. Boyd/Ms. Alvarez/Ms. Dukes:

Palmetto Utilities, Inc. is willing to post this notice on its website now as it might assist in disseminating the information. Please advise if the Commission would like for the Company to do so.

John Hoefer

From: Alvarez, Colanthia <Colanthia.Alvarez@psc.sc.gov>
Sent: Thursday, March 12, 2020 4:09 PM
To: John Hoefer <JHoefer@Willoughbyhoefer.com>; lev99webb@icloud.com; Hall, Roger <RHall@scconsumer.gov>; Grube-Lybarker, Carri <clybarker@scconsumer.gov>; Dover, Becky <BDover@scconsumer.gov>; Pittman, Jenny <jpittman@ors.sc.gov>; Nelson, Jeff <jnelson@ors.sc.gov>; Huber, Christopher <chuber@ors.sc.gov>
Subject: DN2019-281-S - Initial Draft of Revised Notice of Virtual Public Night Hearing

Colanthia B. Alvarez
Clerk's Office

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